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OCT 12 2000
Community Relations
and Outreach Unit

October 10, 2000

Ms. Cindy Colgate
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, WA 98101



**Subject: Comments on Lower Duwamish Waterway Site
Administrative Order on Consent for RI/FS**

Dear Ms Colgate:

The U.S. Environmental Protection Agency and Washington Department of Ecology have requested comments on the proposed Lower Duwamish Waterway Administrative Order on Consent for Remedial Investigation/Feasibility Study. The Boeing Company offers the following comments on the AOC.

Boeing urges EPA and Ecology to sign the AOC in its current form so that the work described in the AOC may proceed. EPA and Ecology established the scope of the AOC, and prepared and submitted the AOC for signature by the AOC respondents. On April 19, 2000, Boeing, King County, the City of Seattle, and the Port of Seattle signed the AOC. That same day, EPA, Ecology and the signatories announced to the public that the agreement had been signed and that all were prepared to move forward to improve environmental conditions in the Waterway. EPA and Ecology should sign the AOC in its current form so that the County, City, Port and Boeing may begin the AOC work as soon as possible.

In its request for comments, EPA stated that it may propose to list the Lower Duwamish Waterway Site on the National Priorities List unless a tolling agreement to extend the statute of limitations on natural resource damage claims is executed. Boeing has already met that condition by signing such an agreement.

On August 16, 1999, EPA's Chuck Clarke and Ecology's Tom Fitzsimmons sent letters to Boeing, the County, the City and the Port, inviting each of them to work with EPA and Ecology on an Administrative Order on Consent for the Waterway. In their letter, EPA and Ecology stated that the AOC should be

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accompanied by a tolling agreement with the Natural Resource Trustees extending the statute of limitations on potential natural resource claims. In accordance with EPA and Ecology's August 16, 1999 letter, and at the request of the Natural Resource Trustees, on December 21, 1999, Boeing signed the tolling agreement prepared by the Trustees, which extended the statute of limitations on potential natural resource damage claims.¹ Boeing thus has met this condition set forth by EPA and Ecology.



Boeing urges EPA and Ecology to promptly sign the AOC in its current form so that the County, City, Port and Boeing may proceed with the AOC work.

Sincerely,

A handwritten signature in black ink, appearing to read 'St Tochko'.

Steven Tochko

Enclosures

cc: Rick Huey, WA. Dept. of Ecology (w/encl.)

¹ Since 1991, Boeing has signed three separate tolling agreements that the Trustees have asked it to sign. In 1991, Boeing was asked to sign and did sign a tolling agreement with the Trustees. In 1997, Boeing was asked to sign a second tolling agreement prepared by the Trustees, which it did. In 1999, Boeing signed a third tolling agreement prepared by the Trustees. Copies of the three tolling agreements are attached to this letter.

AGREEMENT

This Agreement ("Agreement") is entered into this 6th day of March 1991 between the United States of America ("United States") and The Boeing Company ("Boeing").

The undersigned representative of Boeing certifies that he is fully authorized to enter into the terms and conditions of this Agreement, and to execute and bind Boeing to this document.

The United States and Boeing, in consideration of the mutual covenants set out herein, agree as follows:

1. The United States has brought suit against the City of Seattle and METRO in the case, United States v. City of Seattle, Civil Action No. C90-395WD (W.D.Wash), pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), for damages to natural resources in Elliott Bay and the lower Duwamish River, which include the costs of conducting a natural resource damage assessment. The United States is currently reviewing evidence regarding the liability of additional parties, including Boeing, for the natural resource damages.

2. This Agreement does not constitute in any way an admission of liability on the part of Boeing.

3. This Agreement does not constitute an admission or acknowledgement on the part of the United States or Boeing as to the operation of any applicable statute of limitations. The purpose of this Agreement is to permit settlement negotiations to occur within the time allowed by the Agreement.

4. Boeing, in order to avoid the costs associated with

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defending against the United States' claims for relief under CERCLA and in order to allow the parties sufficient time to negotiate a settlement of the United States' claims, hereby agrees that the time between March 7, 1991 and through May 6, 1991 will not be included in computing the time during which the United States must file any action referred to in paragraph one hereof, or used in calculating any other time limitations that may be applicable to the United States' claims, should any such time limitations or statute of limitations be applicable.

5. Boeing further agrees not to assert, plead or raise against the United States in any fashion, whether by answer, motion or otherwise, any defense or avoidance based on the running of any statute of limitations, laches, or other timeliness defense during the aforementioned period, and that any statute of limitations or other time limitation, should any such statute or limitation be applicable, shall be tolled during and solely for that period. By entering into this Agreement, Boeing does not waive and is not precluded from asserting any statute of limitations or any other defense that could have been asserted prior to March 7, 1991, or after May 6, 1991.

6. This instrument contains the entire agreement between the parties. This agreement may not be enlarged, modified,

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altered, or extended except in writing signed by the parties and
endorsed herein.

For the United States:

For The Boeing Company

RICHARD B. STEWART
Assistant Attorney General
Lands Division
United States Department of
Justice



By:

Jim Nicoll
Senior Attorney
Environmental Enforcement

By:

John Daniel Ballbach
Perkins Coie
1201 Third Avenue, 40th Floor
Seattle, WA 98101-3099
Attorney for The Boeing
Company

TOLLING AGREEMENT

This Tolling Agreement (the "Agreement") is entered into by the United States of America, on behalf of the National Oceanic and Atmospheric Administration ("NOAA") and the United States Department of the Interior; the State of Washington; the Muckleshoot Indian Tribe; the Suquamish Indian Tribe (collectively "the Trustees"); and The Boeing Company ("Boeing").

The undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement, and to bind the parties on whose behalf they are signing this Agreement.

The parties, in consideration of the mutual covenants provided in this Agreement, agree as follows:

1. Each party to this Agreement contends that it may have a civil claim against the other for natural resource damages related to the Duwamish River.
2. This Agreement does not constitute an admission of liability by any party.
3. This Agreement does not constitute an admission or acknowledgment by the parties as to the applicability or operation of any statute of limitations. The purpose of this Agreement is to facilitate settlement negotiations between the parties within the time period provided by the Agreement.
4. In order to avoid the burden and expense of litigation, and to allow time for settlement negotiations, the parties agree that the time between January 2, 1997 and January 2, 2000 will not be included in computing the time during which one party must file claims referred to in ¶ 1 above against the other.
5. Each party agrees not to assert any defense relating to statute of limitations, laches or timeliness based on the time period from January 2, 1997 to January 2, 2000, and agrees that any statute of limitations or other time limitation shall be tolled during that period.
6. Any party to this Agreement may, after providing 30 days notice to the others, file a lawsuit asserting the claims referenced in ¶ 1 above against one or more of the others, and the tolling of statutes of limitations as set forth above shall terminate on the 31st day after notice is received.
7. The parties agree that private and confidential settlement discussions are desirable and will use best efforts to maintain the confidentiality of settlement discussions, to the extent permitted by law.

8. Notices given under or related to this Agreement shall be in writing and shall be sent to the following persons:

If to Boeing, notice shall be sent to:

Paul R. Carlson, Esq.
The Boeing Company
P.O. Box 3707
Mail Stop 13-08
Seattle, WA 98124-2207

If to the Trustees, notice shall be sent to:

Robert A. Taylor
U.S. Department of Commerce
National Oceanic and Atmospheric Administration
General Counsel -- Natural Resources/Northwest
7600 Sand Point Way N.E.
Seattle, WA 98115-0070

9. This Agreement contains the entire agreement between the parties with respect to the matters addressed. This Agreement may not be enlarged, modified, altered or extended except in writing signed by the parties.

For the United States

Dated: _____

For the State of Washington

Dated: _____

For the Muckleshoot Indian Tribe

Dated: _____

For the Suquamish Indian Tribe

Dated: _____

For The Boeing Company

Dated: _____

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2. This Agreement does not constitute an admission of liability by any party.
3. This Agreement does not constitute an admission or acknowledgment by the parties as to the applicability or operation of any statute of limitations. The purpose of this Agreement is to facilitate settlement negotiations between the parties within the time period provided by this Agreement.
4. In order to avoid the burden and expense of litigation, and to allow time for settlement negotiations, the parties agree that the time between January 2, 2000 and January 2, 2003 will not be included in computing the time during which one party must file claims referred to in ¶ 1 above against the other.
5. Each party agrees not to assert any defense relating to statute of limitations, laches or timeliness based on the time period from January 2, 2000 to January 2, 2003, and agrees that any statute of limitations or other time limitation shall be tolled during that period.
6. Any party to this Agreement may, after providing 30 days notice to the others, file a lawsuit asserting the claims referenced in ¶ 1 above against one or more of the others, and the tolling of statutes of limitations as set forth above shall terminate on the 31st day after notice is received.
7. The parties agree that private and confidential settlement discussions are desirable and will use best efforts to maintain the confidentiality of settlement discussions, to the extent permitted by law.

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The Boeing Company
P.O. Box 3707
Mail Stop 13-08
Seattle, WA 98124-2207

If to the Trustees, notice shall be sent to:

Michelle Mayer
U.S. Department of Commerce
National Oceanic and Atmospheric Administration
General Counsel – Natural Resources/Northwest
7600 Sand Point Way N.E.
Seattle, WA 98115-0070

9. This Agreement contains the entire agreement between the parties with respect to the matters addressed. This Agreement may not be enlarged, modified, altered, or extended except in writing signed by the parties.

For the United States

Dated: _____

For The Boeing Company

Paul R. Carlson
Counsel

Dated: Dec. 21, 1999